

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



Advisory Opinion No. 304

This is an advisory opinion in response to your letter requesting advice from the Ethics Commission as to whether you can use the knowledge you have of the Sand Island Wastewater Treatment Plant [SIWWTP] plus your general knowledge as an engineer and as a City employee to assist a company in writing a proposal to the City to beneficially reuse sludge. You also ask whether it would make any difference if you were not paid for the work.

The Commission understands the facts relative to your inquiry to be as follows:

You are an engineer with the Department of Environmental Services [ENV].

About 95% of your work deals with permit compliance for wastewater, stormwater, and air at the SIWWTP. You routinely review consultant submittals for projects at the SIWWTP and in the collection area, providing input as to aspects of a project that may affect compliance with the various permits. You also may make general comments on technical aspects of the submittals.

Under one of the consent decrees with the federal government, the City is required to beneficially reuse a minimum of 10 dry tons per day of sludge. You do not work with that decree, and your only involvement with Sand Island sludge (other than to report production statistics) is to check that routine tests are performed to allow it to be disposed of at the landfill. You are not involved in the City's biosolids reuse program, although approximately 4 years ago you reviewed proposals for sludge reuse for a project that subsequently died.

You have been approached by a company being formed that proposes to beneficially reuse the sludge from the SIWWTP. It would like you to assist in preparing proposals to the City to do this. Permission to build a private sludge reuse facility at the SIWWTP site would be a policy decision, probably made by the Director or Mayor.

It is your belief that you were approached because of your reputation for innovative thinking and because of your knowledge of the SIWWTP and what might be involved in locating a sludge reuse facility there. The company would not expect you to make any appearances before City agencies on its behalf. None of the work that you do for the City is confidential in nature--it is all available to the general public.

The ethical question presented is whether such non-City employment would create a conflict of interest with your City position.

The general rule in relation to your question is found in the Revised Charter of Honolulu 1973 (1984 edition) [ROH], Section 11-102(c), which states in pertinent part:

No elected or appointed officer or employee shall... [e]ngage in any business transaction or activity or have a financial interest, direct or indirect, which is

incompatible with the proper discharge of such person's official duties or which may tend to impair the independence of judgment in the performance of such person's official duties [emphasis added].

Whether or not your non-City work is done for pay, it would be considered a business interest, since the motive for working for free would be to develop a clientele. Therefore, the question is whether such an arrangement is either incompatible with the discharge of your City duties or would tend to impair your independence of judgment in the performance of your City duties. Since your duties do not include responsibility for dealing with sludge, your work with the company could not be incompatible with the proper discharge of your City duties. Furthermore, you will not be involved in making the decision as to which proposal for the beneficial use of sludge will be accepted by ENV, so your independence of judgment would not be impaired. Based on the evidence presented, the Commission finds that a conflict of interest is not created by your proposed non-City employment. However, prior to accepting such employment (or doing the work for free), you are advised that you must receive approval for your non-City employment from the Director of your department or his designee.

Dated: March 24, 2000

LINDA A. REVILLA
Chair, Ethics Commission